

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: OFFICE: TEXAS SERVICE CENTER

FILE:

OCT 28 2013

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The AAO dismissed the petitioner's appeal from that decision. The AAO later granted the petitioner's motion to reopen the proceeding, and reaffirmed the dismissal of the appeal. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner filed the Form I-140 petition on October 3, 2011, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts and/or a member of the professions holding an advanced degree. The petitioner initially described his occupation as that of a "visual artist/writer/sociologist." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on February 6, 2012, stating that that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. In its initial dismissal notice of October 11, 2012, the AAO affirmed the director's finding regarding the national interest waiver, but withdrew the finding that the petitioner qualifies for classification as a member of the professions holding an advanced degree. The AAO affirmed that decision on February 20, 2013.

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). The motion must include the proper required fee. 8 C.F.R. § 103.5(a)(1)(iii)(B). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The cover page to the AAO's February 20, 2013 decision indicated that the petitioner "may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. . . . 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen." Factoring in three days for service by mail (*see* 8 C.F.R. § 103.8(b)), The petitioner had to file the motion, with the proper fee, no later than Monday, March 25, 2013. The filing date is not the date the petitioner mailed the motion, but the date that the designated USCIS office received the motion. *See* 8 C.F.R. § 103.2(a)(7)(i).

USCIS received the petitioner's Form I-290B on Tuesday, March 26, 2013, 34 days after the AAO issued its decision. The motion was, therefore, untimely. Furthermore, the March 26 submission did not include the proper fee. A benefit request filed without the required fee must be rejected. *See* 8 C.F.R. § 103.2(a)(7)(i). USCIS rejected the filing and returned it to the petitioner. A rejected benefit request does not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(iii). The petitioner did not properly file the motion with the requisite fee until Friday, April 12, 2013, 51 days after the date of the AAO

decision for which the petitioner seeks reconsideration. Therefore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that the motion shall be dismissed.

The AAO will dismiss the motion as untimely. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is dismissed.